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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 944

RUDY SALOMONS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Superior Court of the State of California, in and for the County of Los Angeles (Appellate Department).

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Petition for a Writ of Certiorari to the Superior Court of the State of California, in and for the County of Los Angeles (Appellate Department).

The Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review a judgment of the Superior Court of the State of California, in and for the County of Los Angeles, (Appellate Department), affirming the Order of the Municipal Court of the Los Angeles Judicial District denying petitioner's motion to set aside his plea of guilty.

Two opinions were delivered by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles. Neither are recorded. Both opinions are included in the record certified to this Court. In each case the order of the Municipal Court of the Los Angeles Judicial District was affirmed, but after rehearing, upon a different basis.

Jurisdiction.

The order of the Superior Court of California was entered on January 29, 1960. On April 18, 1960, Mr. Justice Douglas ordered an extension for the time for filing this petition to May 14, 1960.

The jurisdiction of this Court was invoked under the provisions of 28 U. S. C. Sec. 1257(3).

The Appellate Department of the Superior Court of the State of California is a Court of Last Resort. *In re Wiegand* (D. C. 1939), 27 Fed. Supp. 725.

Questions Presented for Review.

A. Whether the failure to allow the withdrawal of the plea of guilty induced by promises of leniency is consistent with the Fourteenth Amendment to the United States Constitution prohibiting the denial of due process of law.

B. Whether the failure to grant an evidentiary hearing on the question of inducement to enter a plea of guilty is consistent with the Fourteenth Amendment to the United States Constitution prohibiting denial of due process of law.

C. Whether the arbitrary power to disregard uncontradicted allegations of denial of due process is not, *per se* denial of due process prohibited by the Fourteenth Amendment to the United States Constitution.

Pertinent Constitutional and Statutory Provisions.

(1) United States Constitution, Fourteenth Amendment:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law;"

(2) California Business and Professions Code Sec. 2141:

> "Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnosis, treats, operates, for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this Chapter, is guilty of a misdemeanor."

Statement of the Case.

Petitioner is a chiropractor duly licensed to practice his profession in the State of California.

On April 22, 1959, a complaint filed, sworn to by Byard Woodruff (Senior Investigator for the Board of Medical Examiners of the State of California) charged the defendant with, among other things, five counts of violation of Sec. 2141 of the Business and Professions Code.

Thereafter, upon the express representation of the said Byard S. Woodruff and Robert O. Merritt (also an investigator for the Board of Medical Examiners) that if petitioner pled guilty to one count of the complaint, he would receive nothing more than a fine and probation, petitioner entered a plea of guilty to Count 4 of the said complaint (alleging the violation of Sec. 2141 of the Business and Professions Code.)

At the date and time set for the hearing for petitioner's application for probation, the Municipal Court of the Los Angeles Judicial District did in fact grant the de-

fendant probation and did in fact fine him ($500.00), but did also impose, among other conditions of probation, that the defendant serve the first thirty (30) days of the probationary period in the City Jail.

Thereafter, the petitioner noticed a motion in the said Municipal Court to "set aside the judgment and plea of guilty;" attaching thereto affidavits of the petitioner and one Victor L. Hite, setting forth the facts and circumstances of the representations of the officials of the State of California, coercing defendant into entering the plea of guilty. One of the bases for the motion was that to compel a plea of guilty by threats, fraud or coercion was a denial of due process under the Fourteenth Amendment of the United States Constitution.

The motion was heard by the sentencing Court upon argument of counsel. No additional evidence was introduced upon the part of the Respondent, People of the State of California, nor were any opposing affidavits filed by the Respondent People of the State of California, or by the said Byard S. Woodruff or Robert O. Merritt.

The motion, dated July 6, 1959 was noticed for July 13, 1959 and conformed to Section 1201.5 of the Penal Code of the State of California, requiring at least three days' notice of such a motion and service upon the prosecution.

The motion of petitioner was denied by the said sentencing Court. Thereafter, petitioner noticed an appeal to the Appellate Department of the Superior Court in and for he County of Los Angeles, appealing in part from the order denying petitioner's motion.

Petitioner's opening brief on his appeal to the Superior Court alleged in part that the compelling of a plea

of guilty by threat, fraud or coercion is a denial of due process under the Fourteenth Amendment of the United States Constitution.

The first memorandum opinion of the Appellate Department of the Superior Court stated in part as follows:

> "As to the appeal from the order denying defendant's motion to change his plea to not guilty, he was represented by counsel when he changed his plea from not guilty to guilty. The Court was entitled to believe he relied on the advice of counsel, when he pleaded guilty instead of on the advice which a layman had given him some twenty-seven days before he had changed his plea."
>
> *"The other points are likewise without merit . . ."*
>
> (Emphasis added.)

In a petition for rehearing, the petitioner pointed out to the Appellate Court, that (1) the representations were made to appellant by an officer of the State and not a layman, and (2) that the representations upon which petitioner had relied were made not twenty-seven days prior to, but on the date of the entry of the plea. Thereupon, a rehearing was granted to petitioner.

The second memorandum opinion of the Appellate Court, after discussing whether or not the petitioner had in fact a proper appeal from the order denying his motion stated as follows in part:

> 1. ". . . we affirm the order in question on the authority of such cases as *Smith vs. Smith* (1958), 157 Cal. App. 2d 658 which states at page 662: 'It is clear from the Court's discussion, previously referred to, that the Court did not give full credence to the affidavits of plaintiff, her daughter and at-

torney. This the Court was privileged to do although the affidavits were not contradicted by opposing affidavits in view of the interests of affiant in the outcome of the case.' See also *People v. Bannister*, (1957), 153 Cal. App. 2d 480, 484.

"The order denying defendant's motion to set aside judgment and plea of guilty and to modify probation is affirmed. The appeal from the judgment is dismissed."

Petitioner is presently at liberty on bail. Execution of the jail sentence imposed has been stayed pending the outcome of this petition for a Writ of Prohibition.

Reason for Granting This Writ.

The Federal Questions Herein Have Been Properly Raised and Passed Upon at All Stages of the Proceedings. No Adequate Non-Federal Ground Was Used as a Basis for Respondent's Court Decision.

The Constitutional issue was presented in time. The first time that it could have been raised was after the trial court passed sentence. However, the facts relied upon in the motion to set aside the plea of guilty were outside the record and could not have been reviewed on appeal. Therefore, it was proper to make the argument for the first time in the motion. See *Waley v. Johnston* (1942), 316 U. S. 101.

Petitioner herein claimed denial of due process of law under the Fourteenth Amendment of the Constitution, immediately after being sentenced in the trial court, in his notice of motion to set aside the judgment and plea of guilty, in the points and authorities attached thereto and additionally in petitioner's opening brief on appeal to the Appellate Court.

The motion of petitioner to set aside his plea of guilty contained in the points and authorities attached thereto the following:

> "The Fourteenth Amendment of the United States Constitution enjoins a state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States; and from depriving any person from life, liberty or property without due process of law. The same injunction appears in Article I, Section 13 of the California Constitution."
>
> "To compel a plea of guilty by threats, fraud or coercion is denial of due process, and, in a proper case, if found to exist, would warrant issuance of Writ of error *coram nobis*. *People vs. Chapman*, 106 Cal. App. 2d 51."

The identical language was used in petitioner's opening brief on appeal. Though inartfully presented, perhaps, petitioner intended to and did invoke the due process clause of the Fourteenth Amendment to the United States Constitution.

The obvious purport of the pleadings taken as a whole was that petitioner's plea of guilty was involuntary in that it was psychologically coerced by responsible State officers and thereby an unlawful inducement. Petitioner maintains that although the pleadings may not have been as explicit as possible, their meaning falls squarely with the holding of the case of *Braniff Airways v. Nebraska State Board* (1953), 347 U. S. 590, 598-599, wherein this Court held that even though the appellant cited the wrong clause of the Constitution (Commerce Clause, rather than the Due Process Clause) that "though inex-

plicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented."

See also:

New York ex rel. Bryant v. Zimmerman (1928), 278 U. S. 63, 67:

"No particular form of words or phrases is essential, but only that the claim of invalidity in the ground therefore be brought to the attention of the state Court with fair precision and in due time. And, if the record as a whole shows rather expressly, or by clear intendment that this was done, the claim is to be regarded as having been adequately presented. Of course, the decision must have been against the claim of invalidity, but it is not necessary that the ruling shall have been put into direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough."

Of course where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon a Federal question, to analyze the fact, this Court will review the State Court's findings.

Sterling v. Constantine (1932), 287 U. S. 378, 398;

Chambers v. Florida (1939), 309 U. S. 227, 228-229;

Norris v. Alabama (1934), 294 U. S. 587, 590;

Ashcraft v. Tennessee (1943), 322 U. S. 143, 147-148;

Graig v. Harney (1946), 331 U. S. 367, 373-374.

The Respondent Appellate Court Passed Squarely Upon the Federal Questions Raised by Petitioner and Decided Adversely to the Petitioner and to the Fourteenth Amendment of the United States Constitution and Denied Petitioner Due Process of Law.

First of all, there was no adequate and independent ground for the decision other than upon the Federal question raised by petitioner. This statement requires a consideration of the second memorandum opinion of the Appellate Department of the Superior Court of California.

The Court there declared that the purported appeal from the judgment was dismissed because there was no judgment. At no point in petitioner's briefs was there any indication that he was appealing from the judgment. This indication was presented in petitioner's notice of appeal at the very end.

The Court then went on to say that the order denying the petitioner's motion to set aside the plea of guilty was probably an appealable order. If the Court had said it was not appealable without qualifying it, it would constitute an adequate independent non-Federal ground. However, the Court continues in its opinion to declare that even if the order is appealable, it should be affirmed and in the next to last sentence of the opinion, it declares that the order is affirmed. Therefore, the Court effectively held that the order was appealable, for if it were not, then the proper ruling would have been "appeal dismissed" rather than "order affirmed." Thus, the Court decided the case on the merits of the contention that the guilty plea should be disallowed, since it denied due process of law to the petitioner.

In the recent case of *Irvin v. Doud* (1959), 359 U. S. 394, the State Supreme Court explicitly declared that there was no basis for an appeal but continued its opinion and declared that the defendant had not been denied his constitutional rights. This Court, in denying certiorari originally, indicated that Federal habeas corpus would lie; and after the lower Courts had denied defendants' petition, the defendant once again brought a certiorari to this Court, which allowed his petition.

Although the *Doud* case is not directly in point, since it involves certiorari for the purposes of determining whether or not habeas corpus was proper, yet the case is of great significance in that implicit within this Court's granting of the petition therein, is that there was no adequate and independent stated ground for dismissal of the appeal therein notwithstanding the fact that the State Court seemed to hold that a state procedural rule precluded appeal. Apparently by discussing the Federal issues involved in the appeal at the State level, the State Court had nullified any claims of adequacy of independent non-Federal grounds. The *Doud* case, *supra*, implies that the Appellate Department of the Superior Court herein in fact decided the petitioner's case on the merits by discussing the Federal question and by affirming the order, rather than by dismissing the appeal from the order. Thus, the Appellate Court cannot be said to have passed upon any question on an adequate non-Federal ground, since the Court waived them by discussing the case on the merits, *i.e.*, on the withdrawal of the plea of guilty induced by the promises of leniency.

A subsidiary question which the Court itself discussed in its first memorandum opinion, but did not reiterate in its second memorandum opinion, was the question of

whether or not the plea of guilty was induced by a responsible state officer. The first opinion indicated that the promises were made by a "layman." The second opinion remained silent on the subject, and therefore we can assume withdrew its objections to this specific point.

In petitioner's affidavit to the trial Court, he alleges that the promises were made on three separate occasions by State Officers:

1. On May 5th, Mr. Robert O. Merritt, a special investigator of the State Board of Medical Examiners.

2. Between May 4th and June 1st, Mr. Caplan, (his attorney) told petitioner that the State Board (Medical) itself had made promises.

3. On June 1st, promises were made by Mr. Woodruff, Senior and Special Investigator for the State Board of Medical Examiners. Mr. Woodruff also signed the complaint.

Section 2116 of the Business and Professions Code, State of California states:

> "The Board (Medical) may prosecute all persons guilty of violating the provisions of this Chapter (2141 Business and Professions Code is included therein). It may employ inspectors, special agents and investigators . . . to carry into effect the provisions of this Chapter."

In *Reid v. Maloney*, 38 Cal. App. 2d 405 (1940), the Court stated:

> "The members of the State Board of Medical Examiners are public officers. The special officer Burn was a public police officer. The Court analogized the Medical Board and its officers to the Chief of Police and his subordinates."

And, in *People v. Jabon,* 153 Cal. App. 2d 456 (1957), it was stated that

> "Robert Truitt, a special investigator for the Board of Medical Examiners, arrested defendant and . . . Truitt had a warrant for the arrest of defendant issued by the Municipal Court for a violation of Section 2141 of the Business and Professions Code, practicing medicine without a license . . . Truitt was considered a peace officer."

Petitioner herein was arrested by Officials of the Board on a signed complaint by a Board investigator.

Fundamental Rights of Petitioner, Guaranteed Him by the Constitution of the United States Have Been Violated and the Petitioner Has Been Denied Due Process of Law Under the Fourteenth Amendment Thereto.

A. Petitioner was denied the right to withdraw his involuntary, coerced plea of "guilty."

The rule is well established that a *confession* which is induced by promises of leniency is "involuntary" and therefore to utilize it to obtain a conviction is a denial of due process.

Bramm v. U. S. (1897), 168 U. S. 532, 557;
Watts v. Indiana (1948), 338 U. S. 49, 59-60.

A plea of guilty is equivalent to a full confession in open Court.

Pennsylvania ex rel. Harman v. Claudy (1956), 350 U. S. 116;
Littlejohn v. Hiatt (1952), 197 F. 2d 334;
Accadia v. U. S. (1927), 15 F. 2d 619.

Q. E. D. A plea of guilty which has been induced by promises of leniency cannot be allowed to stand since a conviction based thereon violates due process of law.

Waley v. Johnston, supra, 316 U. S. 101.

See also:

Leyra v. Benno (1953), 347 U. S. 556.

B. Petitioner was denied due process in that he was not given a hearing for the purpose of presenting evidence on the question of the inducement offered to him in exchange for the plea of guilty.

Where a defendant petitions for a habeas corpus in the ground that his conviction was based on an "involuntary" guilty plea or confession, a trial Court cannot dismiss the petition without hearing evidence, unless it appears from the face of the petition that the petition is wholly without merit.

Pennsylvania ex rel. Harman v. Claudy, supra, 350 U. S. 115;

Waley v. Johnston, supra, 316 U. S. 101.

Where the defendant moves to have a sentence vacated on the grounds of involuntary guilty plea or confession, the same rule applies.

Motley v. U. S. (1956 5th Cir.), 230 F. 2d 110.

The above rules are equally applicable to the petitioner herein in his motion to withdraw his plea of guilty. Due process of law demands that the petitioner should have been given a hearing.

As stated in *Waley v. Johnston, supra,* 316 U. S. 101, at page 104:

"If the allegations are found to be true, petitioner's constitutional rights were infringed. Where a con-

viction on a plea of guilty coerced by a Federal law enforcement officer is no more consistent with due process than a conviction supported by a coerced confession . . ."

Pennsylvania ex rel. Harman v. Claudy, supra, 350 U. S. 116 (1956) at page 120:

"The allegations as to petitioner's treatment prior to confession and his understanding of the nature and consequence of a guilty plea present the very kind of dispute which could be decided only after a hearing."

The Court went on further to state that the petitioner there could not be denied a hearing, *even though the allegations in his petition for a writ of habeas corpus were controverted.*

This Court will review a finding of fact of a state Court where a Federal right has been denied as a result of the findings shown by the record to be without evidence to support them.

Fiske v. Kansas (1927), 274 U. S. 380, 385-386.

In the instant case, there is no evidence before either the trial Court or the appellate court which tended to indicate that the guilty plea was not induced by leniency promises. The only evidence before the trial Judge and the Appellate Court was the uncontradicted affidavit of petitioner and his impartial corroborating witness, which conclusively established a plea of guilty was the result of promises of leniency made by responsible state officers.

C. Petitioner contends that to allow the state Court the arbitrary power to disregard uncontradicted allegations of denial of due process is, *per se,* a denial of due

process of law prohibited by the Fourteenth Amendment to the United States Constitution.

By extrapolation of the meaning and sense of the cases cited in (A) and (B) above, it is evident that the Respondent Appellate Court permitted the trial Court to use its unfettered discretion to disbelieve uncontradicted affidavits of petitioner and his corroborating witness. If a state Court is given the power to disbelieve such uncontradicted affidavits, it is in effect given uncontrolled discretion to disallow the withdrawal of a guilty plea, even if the Court believes the plea resulted from and it was in fact caused by promises of leniency or otherwise.

If the Appellate Court can accept the rule that the trial Court can disbelieve the uncontradicted affidavits without having a hearing on the issues raised therein, it would not have before it any facts upon which to review the trial Court's discretion.

If the Appellate Court is allowed to disregard the affidavits as was obviously the case at bar, and then merely declares the rule without delving further into the question of the denial of due process, then the trial Court is left with complete discretion to arbitrarily and capriciously refuse to allow the withdrawal of any plea of guilty, no matter what the circumstances behind the plea.

Even if the Appellate Court did choose to delve into the question of inducement or involuntariness, it would have no way of determining the basis upon which the trial Court denied the motion.

The traditional reasons given by Appellate Courts in refusing to review a trial Court's finding of fact does not exist in the present case. Usually, it is said that the trial Court is able to judge the demeanor of the witnesses, the way in which they relate their testimony and other

facts which enable the trier of the fact to determine their credibility.

In the instant case, the trial Judge (and the Appellate Court) only had the uncontradicted affidavits before them and therefore, they could in no way determine the credibility of petitioner or the other affiant. Therefore, the traditional reason for refusing to re-examine the findings of the trial Court on the Appellate level do not exist here.

This Honorable Court is in as good a position as was the trial Court to determine whether the plea of guilty was induced by and was the result of the promise of leniency by responsible state officers. And it has been held on numerous occasions that this Court will review a state Court's findings of fact where a Federal right has been denied as a result of the findings shown by the record to be without evidence to support it.

Fiske v. Kansas, supra, 274 U. S. 380, 385-386;

Creswell v. Knights of Pythias, 225 U. S. 246, 261;

Stanley v. Schwalby, 162 U. S. 225, 274-277-279;

Schlemmer v. Buffalo, Rochester & Pittsburgh Railway Company, 205 U. S. 1;

Kansas City So. Railway Co. v. Alberts Comm. Co., 223 U. S. 573, 591.

A rule which has built into it the uncontrolled power to violate fundamental Federal rights to a trial on the merits must be violation of the defendant's right to due process of law.

The Due Process Objections Raised in This Petition Have Not Heretofore Been Precisely Presented, Examined nor Passed Upon by This Court.

There has never been a United States Supreme Court decision that has squarely decided that a plea of guilty induced by promises of leniency violates due process. Some cases contain dictum and others seem to be based upon other than constitutional grounds:

Bramm v. U. S. supra, 168 U. S. 532, 557:

"In this Court, the general rule that the confession must be free and voluntary, that is not produced by underlying inducements engendering either *hope* or fear is settled . . ." (Emphasis added);

Watts v. Indiana, supra, 338 U. S. 49, 59-60:

"Of course, no confession which has been obtained by any form of physical violence to the person is reliable and hence, no conviction should rest upon one obtained in that manner. Such treatment not only breaks the will to conceal or rely, but may even break the will to stand by the truth. Nor, is it questioned that the same result can sometimes be achieved by threats; *promises* or *inducements* which torture the mind, but put no scars on the body." (Emphasis added.)

(Both of the above cited cases were coerced confession cases.)

The cases of *Motley v. U. S.* (5th Cir. 1956), 230 F. 2d 110; (guilty plea); *Shelton v. U. S.* (5th Cir. 1957) 246 F. 2d 571 (*guilty plea*); and *Crawford v. U. S.* (5th Cir. 1955), 219 F. 2d 207 (confession) have held that a conviction based on promises of leni-

ency are non-supportable, but the former two do not indicate they are based on constitutional grounds and the latter is decided on the basis of a Federal statute.

So far as petitioner can ascertain, the precise point of whether a denial of motion to withdraw a plea of guilty induced by a promise of leniency is a denial of due process of law under the Fourteenth Amendment to the United States Constitution, has not yet been settled.

As far as this petitioner can determine, there is no case dealing with the question of whether or not as a matter of due process of law the State should have granted petitioner a hearing upon the question of the alleged inducement; and whether the failure to give such a hearing, whether requested or not, was a denial of due process of law under the Fourteenth Amendment of the United States Constitution.

The petitioner's third basis for this petition for a Writ of Certiorari; that it is and was a denial of due process of law for the Respondent Appellate Court to allow the trial Court to disbelieve the uncontradicted affidavits alleging a denial of due process of law under the Fourteenth Amendment to the Constitution of the United States, has never been raised nor passed upon in dictum or otherwise, to the knowledge of your petitioner.

The only case that petitioner can find concerning "deals" made with law enforcement officers is that of *Crawford v. U. S.*, 219 F. 2d 207 (Fifth Cir., 1955) wherein the Court held that confessions were involuntary and hence inadmissible. At page 211, the Court declares:

> "From appellant's standpoint, it was a poor bargain, since the officers had no authority to promise him immunity. But the controlling fact is that there

was a bargain. Part and parcel of the whole conversation about source of supply and 'cooperation' which will not afford an immunity relieves appellant from the use of admission into evidence against him. 'In the Federal Courts requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat, A confession is voluntary in law, if, and only if, it was, in fact, voluntarily made."

Conclusion.

In the light of the foregoing, the petitioner urges that he has been improperly sentenced to confinement by respondents and improperly denied his right to a trial on the merits due to the involuntary nature of the plea of guilty entered by petitioner in the trial Court. Petitioner respectfully prays that this Court grant his petition for a writ of certiorari to the Appellate Department of the Superior Court of the State of California, in order that a full hearing as to this matter may be had.

Respectfully submitted,

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